United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLANT

76-1506

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 76-1506

UNITED STATES OF AMERICA,
Appellee,
-against-
JOHN QUINN and THOMAS FURY,
Defendant-Appellees.

On Appeal from the United States District Court, for the Eastern District of New York

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BRIEF OF BEHALF OF
APPELLANT QUINN

EVSEROFF & SONENSHINE
Attorneys for Defendant-Appellant
186 Joralemon Street
Brooklyn, New York 11201
Telephone No. (212) 855-1111

WILLIAM SONENSHINE, ESQ.
Of Counsel

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STATEMENT

The Appellant, John Quinn, and two others were charged in a three count indictment with two counts of Transportation of Stolen Property in Interstate Commerce (Title 18, United States Code § 2312 and § 2), and with Conspiracy to do such pursuant to Title 18 United States Code § 371.

Pretrial hearings were conducted before the Honorable Judge Pratt in the United States District Court, Eastern District of New York, pursuant to the appellants motion to suppress the fruits of a court ordered electronic surveillance conducted by the State authorities in Nassau and Queens Counties. At the conclusion of the hearings the court denied the appellants motions at which time they each entered a quilty plea to the first count of the indictment while preserving their right to appeal the court's decision on the motion (32. A - a). *

Thereafter, on October 15 , 1976, the appellant John Quinn was sentenced to a Three year period of incarceration by Judge Pratt but was continued on bail pending the appeal of his matter.

* Numbers appearing in parenthesis refer to pages of the proceedings in the lower court while those preceded by the letter A refer to pages in appellant's appendix.

FACTS

The Nassau County District Attorney's Office obtained a court order from Judge Frank Altimari, Supreme Court, Nassau County, on March 15, 1974 permitting the interception of phone calls over an instrument in Suffolk County. That interception terminated on April 16, 1974 and the tapes were sealed on May 1, 1974.

Thereafter, copy attached, on April w6, 1974, New York State Supreme Court, Queens County Justice Bernard Dubin signed an order for a wiretap on the telephone instrument bearing the number 835-3035, located in the residence of Thomas Fury at 83-11 149th Avenue, Queens, New York. By the terms of the order the wiretap was to commence on April 29, 1974 and could continue for 30 days until May 29, 1974. The wiretap began on May 3, 1974. On May 28, 1974, Justice Dubin signed an order extending the wiretap for an additional 30 days until June 27, 1974. On June 27, 1974, Justice Dubin signed a second extension order. This order extended the life of the wiretap until July 26, 1974.

On July 25, 1974, a Thursday, the wiretap was terminated. On that day, Detective Luis Gonzalez of the New York City Police Department

transported to the Queens County District Attorney's office, for sealing, the original tapes and transcripts of conversations overheard during the wiretap. Shortly after the arrival of Detective Gonzalez at the District Attorney's Office it was determined that Justice Dubin was unavailable to sign the sealing order. Consequently, the tapes and transcripts were locked in the office vault. The vault was secured by a combination lock. Only the District Attorney himself and two Deputy Chief Assistants knew the combination, and only the District Attorney and the two Deputy Chief Assistants were permitted access to the vault. Justice Dubin was also unavailable on Friday, July 26, 1974. The next week, not later than Tuesday, July 30th, it was learned that Justice Dubin was on vacation. On the 30th District Attorney Ferraro signed the return for the eavesdropping warrant, and the next day Justice Leonard Finz signed the sealing order. During the period between July 26th and July 31st the tapes remained locked in the vault at the Queens County District Attorney's Office. On July 31, 1974 they were taken from the vault to be sealed by Justice Finz. Immediately after the sealing the tapes and transcripts were were returned to the vault.

On October 21, 1974, Justice Dubin signed an order postponing the date for service of notice and inventory with respect to the wiretap until January 21, 1975. A similar order was signed by Justice Dubin on

February 10, 1975, postponing the date for service of notice and inventory for an additional 90 days.

On February 20, 1976, the United States Attorney's Office sent a letter to the attorneys for appellant Quinn notifying them of the wiretap and of the fact that appellant Quinn's conversations were overheard on the wiretap.

Prior to the hearing before Judge Pratt counsel entered into certain stipulations pertaining to the Queens County orders. These stipulations which are set forth at page 53 of the minutes allowed the government to rest its case upon the affidavits of two individuals. These affidavits are set forth in toto in appellants appendix (A-94-106)

POINT ONE

IT WAS ERROR FOR THE COURT TO DENY APPELLANTS MOTION TO SUPPRESS THE TAPES IN THE INSTANT MATTER BASED UPON THE FAILURE OF THE EXECUTING AUTHORITIES TO TIMELY SEAL THE TAPES

The appellant sought to suppress the tapes which the government possessed because of a failure by the interceptors to have said tapes sealed as was required by the applicable statutes.

There were two wiretaps conducted by the New York State authorities, the fruits of which were sought to be suppressed. The first wiretap occurred in Nassau County and was conducted pursuant to court orders and under the supervision of the Nassau County District Attorney's office. The second wiretap was based upon information derived from the first but was conducted in Queens County under the supervision of the Queens County District Attorney's office.

The prosecutor conceded for purposes of the lower court's decision that the Nassau County authorities failed to properly seal the tapes recorded pursuant to their order, that the delay cannot be explained and that it was not a reasonable delay (140, A63-a). Thus, the Court was asked to concentrate upon the Queens orders and their execution.

The following is a chart that may aid in determining the issues to be presented with regard to the Queen's order and it's extensions and amendments:

DATE OF ORDER	EFFECTIVE DATE	TERMIN-ATION DATE	SEALING DATE	LENGTH OF DELAY
4/26/74	4/29/74	5/28/74	7/31/74	63 days
5/28/74 (extension)	5/29/74	6/27/74	7/31/74	34 "
6/12/74 (extension)	6/12/74	6/27/74	7/31/74	34 "
6/27/74 (extension)	6/27/74	7/26/74	7/31/74	5 "

It is the appellants contention that the reasons advanced by the government for the delays are insufficient to prevent the suppression of the tapes. (A). In any event the excuse put forth by the government relates to the lasping of five (5) days between the expiration of the June 27, 1974 extension and the actual sealing without considering the prior thirty four (34) and sixty three (63) day delays. The mere recitation that it was understood that sealing is only required after an order and it's extensions terminate is refuted by case law and the legislative history of the statutes involved . In view of the fact that the orders in question were issued to state authorities pursuant to the state statutes the applicable state law should be determinative in deciding whether there was compliance

with sealing requirements. The following arguments wll concentrate on such state law with necessary references to the federal statutes and pertinent case law.

It is contended that the electronic surveillance in the case at bar was conducted in such a manner as to violate the defendant's rights under the Fourth Amendment of the United States Constitution, Article 700 of the New York Criminal Procedure Law and Title 18 United States Code.

SEALING

The failure of the Queen's County District Attorney's Office to promptly and properly seal the tapes of the conversations seized and recorded immediately upon the expiration of each thirty day surveillance period as required by C.P.L. § 700.50 [2]* and Title 18 U.S.C. § 2518 [8a]* required the court to suppress from use at trial the conversations seized under the eavesdrop order.

* C.P.L. Section 700.50 [2] states:

"Immediately upon the expiration of the period of an eavesdropping warrant, the recordings of cummunications made pursuant to subdivision three of section 700.35 must be made available to the issuing justice and sealed under his direction."

Continued

A reading of C.P.L. § 700.50 [2] and Title 18 U.S.C. § 2518 [8a]** will reveal that there exists no ambiguity or equivocation in these statutes. It simply states that immediately after a respective wiretap order has expired, the People must transport the original tape recordings to the issuing Justice, and he must seal the tapes.

The use of the word immediately was not chosen casually by the Legislature. When one compares the sealing requirement with other provisions within C.P.L., Article 700, one will find no such similar mandated time requirements. ***

Turning to the facts applicable to sealing, we note that the tapes in this case were not sealed by Justice Dubin or any other judge until July 31, 1974. Thus, the gap between the termination of the first eavesdrop order (May 28, 1974) and the date of sealing (July 31, 1974) was in excess of two months.

Title 18 U.S.C. Section 2518 [8a] states:

"The contents of any wire or oral communication intercepted by any means authorized by this chapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subsection shall be done in such a way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, such recording shall be made available to the judge issuing such order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclusure pursuant to the provisions of subsections (1) and (2) of section 2517 of this chapter for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or

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Clearly, this tardiness in bringing the tapes to the Supreme Court - house cannot realistically be said to comply with Sec. 700.50 [2].

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* " disclosure of the contents of any wire or oral communications or evidence derived therefrom under subsection (3) of section 2517."

** From hereon any reference to sections of Article 700 of the New York Criminal Procedure Law should be deemed to include a reference to the appropriate section of Title 18 United States Code. [18 U.S.C. §251 (8) (a)].

*** Thus, C.P.L. Sec. 700. 65 [4] which is addressed to the amendment process the Legislature determined that amendments be made "as soon as practical". Likewise, C.P.L. Sec. 700.50 [3] which requires the serving of inventory notice upon those whose conversations have been monitored and intercepted, speaks in terms of"... within a reasonable time..." . Nowhere else is it required thatan act under the wiretap article be accomplished "immediately" except for sealing.

The New York State Court of Appeals in its recent decision in People v. Sher, 38 N.Y. 2d 600 (Feb. 19, 1976), stated unequivocably that the language in Sec. 700.50 [2] is to be strictly construed. Judge Jasen, writing the decision for an unanimous Court, held that:

> " [W]e held that the sealing requirements must be strictly construed. The need for rigid adherence to the statutory procedure is explained by the history of our present wiretapping provisions. Until 1968, the Federal Communications Act of 1934 prohibited any person unauthorized by the sender from intercepting and revealing the contents of any communication (citations omitted)".
>
> " The Federal Communications Act modified to permit states to intercept wire and telephone communications in accordance with the congressional and constitutional guidelines. (47U.S.C.605). Thereafter, our state revised its electronic surveillance statute (citations omitted). The provisions of Article 700 of the Criminal Procedure Law track, as they must, the language of the federal law. From this review of legislative history, it is clear that the requirements of Article 700, which are reflective of controlling federal law, must be strictly construed. "
>
> " Among the congressional requirements was the direction that the intercepted wire or oral communications be... made available to the judge that issued the warrant for sealing under his direction. "

(See: People v. Sher, supra, 38 N.Y. 2d at 603).

Additionally, it must be remmebered that Article 700 exists in derogation of the common law. This fact in conjunction with the statute's

interference with individual privacy and personal liberty, likewise compels strict construction. * Noting the rules for statutory construction established in McKinney's Consolidated Laws of New York, Book 1, Statutes, one finds that strict construction is prescribed for statutes in derogation of the common law.

> " The Legislature in enacting statutes is presumed to have been acquainted with the common law, and generally, statutes in derogation or contravention thereof, are strictly construed..."

And, concerning statutes which operate to interfere with individual privacy or liberty, Section 311 points out:

> " A statute which infringes on common right is strictly construed".

In light of the aforementioned authority, there can be no question that when this statute says "immediately", it means quite literally, "immediately". **

In addition to resolving the issue of strict construction, recent cases have also addressed themselves to whether a defendant must demonstrate prejudice from a failure to seal. The Court of Appeals in People v Nicoletti, 34 N.Y 2d 249, 256, N.Y.S. 2d 855 (1974),

*See: In Re Mayers, 169, N.Y.S. 2d 839 (Ctl of Gen'l Sess. N.Y., 1957); Tilbre Home Builders, Inc. v. Leidel, 42 A.D. 2d 578, 344 N.Y.S 2d 614, Rev'd on other grounds, 35 N.Y. 2d 347, 361, N.Y.S. 2d 895 (1975).

** The term "immediately" is defined in Webster's New World Dictionary,

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conclusively answered this question. In Nicoletti, the People contended that absent a showing of prejudice evolving from non-sealing, the tapes should not be suppressed. In that case, no proof was offered that the People had tampered with the tapes. In fact, the defendant did not even make that a llegation. Nevertheless, the Court ordered all electronically seized evidence to be suppressed, holding:

> " There is, of course, no indication whatsoever that the tape recordings herein were altered in any way and we intimate no such use. It is the petential for such abuse to which we address ourselves".
>
> * * *
>
> "Through skillful editorial manipulation, alterations may be undetectable, or, if detectable at all, then only by the most sophisticated devices and techniques involving time consuming and expensive analysis by technical experts. While not foolproof, sealing reduces the risk of such manipulation to tolerable limits".
>
> * * *
>
> " The sealing requirement is to be strictly construed and it is not the defendant's burden to come forward with evidence of tampering when unsealed recordings are sought to be introduced as evidence".

People v. Sher, supra, provided the Court with an opportunity to re-evaluate their position adopted eight months prior to Nicoletti. In a strong reaffirmation, the Court wrote:

** Second Edition, to mean"... without delay; at once; instantly". Black's Law Dictionary, Fourth Edition, notes "the words ' immediately' and 'forthwith' have the same meaning. They are stronger than the expression 'within a reasonable time' and imply prompt, vigorous action without any delay (Citations omitted).

" The sealing requirement was designed to prevent the abuse of wiretap recordings. To that end, as we held in Nicoletti, the requirement must be strictly construed. The burden is on the prosecution to establish due compliance with the statutory procedures. We adhere to the rule announced in Nicoletti".

The case at bar demonstrates remarkable similarities to the factual circumstances extant in People v. Simmons, 84, Misc. 2d 749, 378 N.Y.S. 2d 262 (S. Ct. 1975), unanimously affirmed by the Appellate Division, First Department, October 13, 1976, upon the lower courts decision). In Simmons the Court was faced with a series of wiretaps ". . . each prompted by the fruits of the previous surveillance . . .". In that case, the Court considered the failure of the People to "immediately" seal six separate eavesdropping orders. The delays involved ranged from 21 to 109 days. In Simmons, as in Nicoletti, there was no allegation on the part of the defendant that any impropriety or tampering had occurred.

In the well-reasoned decision by Judge Gorman in People v. Simmons, supra, the effect of each of the aforementioned facts was systematically analyzed. Beginning with the geometric structure of the wiretap orders themselves - that is, one growing from the derivative fruits of its predecessor the Court found that suppression of any given warrant additionally required the suppression of ". . . all communications and evidence derived therefrom . . . ." * Since the mainstay of each affidavit in support of successive warrants was the exploitation or derivative use of evidence gained in

* In accord, see: People v. Brown, 80 Misc. 2d 777, 364 N.Y.S. 2d 364 (S. Ct. 1975); People v. Koutnik, 37 N.Y. 2d 873, 874-875 (1975).

pre-existing taps, the defendant asserts that the suppression of any warrant in the instant case would require the suppression of all subsequent warrants.

Secondly, the Court in Simmons reached the crucial issue of the effect of an interim delay upon wiretaps, which are subsequently judicially sealed.

> " Finding that the delay in sealing was not excusable, the court must now decide whether suppression is mandated.
>
> " With one exception (citations omitted), the courts have equated a delay in sealing with no seal at all and have forgiven the delay upon only satisfactory expkanation thereof. (Citations omitted)".
>
> * * *
>
> " Since the absence of a seal statutorily precludes the introduction of tapes into evidence and our State's highest court ordered suppression in the absence of a seal, this court is setting no precedent and has no alternative in barring the use of recordings at trial".

Finally, Simmons reiterated the position established in Nicoletti that a defendant has no burden to demonstrate prejudice from the lack of prompt sealing.

> " In Nicoletti, the court carefully pointed out that no indication of any alteration appeared, but that '[i]t is the potential for such abuse to which we address ourselves".

Research has not disclosed a single case in which interim sealing delays of the proportions reached here were tolerated. * In fact, the courts of this state, strictly construing the provisions of 700.50 [2] have

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imposed stringent requirements before compliance will be found.

In the decision in People v. Guenther, 81 Misc. 2d 258, 366 N.Y.S. 2d 306 1975, the Court found that an interim delay of seven days before electionically recorded tapes were sealed required suppression. The Court held". . . the sealing requirement must be strictly construed ' to prevent tampering, alterations or editing;' to aid in establishing the chain of custody; and to protect the confidentiality of the tapes . . . .". Finding no valid explanation for a seven day hiatus between the cessation of the wiretap and judicial sealing, the Court suppressed all electronically seized evidence.

Recently the United States Court of Appeals for the Second Circuit also reaffirmed its position that the failure to seal in a timely manner requires suppression of that intercepted. In United States v. Gigante, et al., F. 2d (2Cir., June 22, 1976, per Kaufman C.J.) it was held that the Government's failure to timely seal electronically intercepted conversations was a violation of the Federal "sealing" requirement (18 U.S.C. 2518 [8a])

* Insofar as the decision in People v. Blanda, 80 Misc. 2d 79, 362 N.Y.S. 2d 735 (S. Ct. 1974), is inconsistent with this statement, it is noted that the Court, in Blanda, recognized the existence of a valid excuse for a four-day delay. However, since Blanda predates the decision in Nicoletti, and furthermore, since the Court held that Section 700.50 [2] should be liberally construed, the defendant respectfully asserts that the holding has been overruled sub silentio by Nicoletti and Sher . Similarly, in People v Carter, 81 Misc. 2d 345, 365 N.Y.S. 2d 964 (Nass. Cty, Ct. 1975), an eight-day interim delay was tolerated. However, no similar excuse for such delay is present in this case.

which requires that the tape recordings be suppressed from use at trial. Furthermore, the Court of Appeals rejected the Government's contention that a failure to promptly seal should not require the "drastic remedy" of suppression. (See also United States v. Giordano, 416, U.S. 505, 527 [1974]; United States v. Chavez, 416 U.S. 562 [1974]).

For all of the aforementioned reasons stemming from the District Attorney's failure to comply with C.P.L. Sec. 700.50 [2], all of the conversations electronically intercepted should have been suppressed by the lower Court.

POINT TWO

THE COURT ERRED IN NOT SUPPRESSING THE CONVERSATIONS OF APPELLANT, JOHN QUINN, BECAUSE OF THE FAILURE OF THE INTERCEPTING AUTHORITIES TO NOTIFY HIM WITHIN THE TIME PERIOD SET FORTH BY THE STATUTE

It is our contention herein that since the eavesdropping pursuant to Mr. Justice Dubin's order of April 29th terminated by July 26th, and that since the order postponing notice terminated on May 10, 1975, the appellant was thereafter, within 90 days from May 10th entitled to the tasutory notice pursuant to New York Criminal Procedure Law Section 700.50. Mathematically computed, the 90 day period following May 10th would expire on August 10th.

Such service of the statutory notice has not occurred as of the d ate of this motion some 150 days past the 90 day period.

In People v. Huston, 34 N.Y. 2d 116, 356, N.Y. Sub. 2d 272, the New York Court of Appeals dealt with the question of giving the statutory notice. Judge Rabin writing for an unanimous court at 34 N.Y. 2d 121:

> " The People admit that they did not give written post-termination notice required by the statute. While we may assume that the lack of such notice might ordinarily require suppression of the evidence obtained as a result of the warrant (see People v. Tartt,

> "Misc. 2d 955, 336 N.Y.S. 2d 919, supra), we believe that the special circumstances present in this case compel a differentconclusion".

The Court then detailed the unique circumstances which governed its decision in this case. The case at bar, however, presents no such extraordinary situation upon which the prosecution can rely to relieve itself of its default. The underlying judicial philosophy applicable here are in words expressed in U.S. v. Giordano, 469 F. 2d 522, 530:

> " We cannot relegate provision after provision to oblivion by terming each a mere 'technicality' - or else we leave the statute a shodow of itself, an apparition without substance. "

An interesting corollary is found in the case of Olmstead v. U.S. 277 U.S. 438, 485, 48 S. Ct. 564, 575:

> [when] " government becomes a law breaker, it breeds contempt for law".

See also People v. Kennedy, 75 Misc. 2d 347 N.Y.S 2d 377.

A detailed discussion of the history and purpose of the 90 day provision is found in People v. Tartt, 71 Misc. 2d 955, 336 N.Y.S. 2d 919, (Supreme Court, Erie County 1972), cited with approved in Huston, supra.

In that case the court granted a motion to suppress intercepted conversations pursuant to an eavesdropping order where there was a failure to comply with the ninety day statute. The Court pointed out

(336 N.Y.S. 2d 923-926):

> " Turning first to the failure of the People to give notice of the fact that an order authorizing interception had been granted, the date thereof, the period authorized and the fact that oral communications had been intercepted, it must be emphasized that if this omission is fatal it is because it conflicts with a statutory commandment of the Congress of the United States and of the New York State Legislature without reference to the authorizing order which purported to relieve the People of that requirement. How strictly this and other provisions of the Federal and State Acts should be read depends largely on one's reading of the judicial and legislative history leading up to the enactment of Title III of the Omnibus Crime Control and safe Street Acts of 1968, Sec. 2510 et seq. of the U.S. Code. The New York statutes, Article 700 and 710 of the CPL, formerly Titles II D and III of the Code of Criminal Procedure, are patterned upon the federal act, as they must be, since the latter is entitled to pre-eminence in authorizing and regulating the interception of wire and oral communications".
>
> **********
>
> " The Congress has made it clear that Title III was carefully enacted to meet the objections which the United States Supreme Court had ununciated in Berger v. New York, 388, U.S. 41, 87 S. Ct. 1873, 18 L. Ed. 2d 1040, while striking down an earlier New York Statute. Title III was drafted to meet these standards and to conform with Katz v. United States 389, U.X. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967)' (Senate Report No 1097, U.S. Code Cong. and Admin, News, 1968 p. 2153)

One of the objections set forth in the Berger opinion was that the earlier New York Statute required neither notice to those whose communications had been intercepted nor any showing of exigency which might excuse or postpone notice (Berger v. New York, supra, p. 60, 87 S. Ct. p. 1873). The Congress responded to that objection by enacting subsection (8) (d) of Section 2518 which requires that notice be given within a reasonable time but not later than 90 days after disapproval of an application for an order or termination "of the period authorized".

" Perhaps the question is made somewhat easier here since the Congress itself has written an evidentiary sanction into the statute by way of Section 2515, Title 18 U.S. Code, which provides:
'Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing or other proceeding in or before any Court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the United States, a State, or a political subdivision thereof if the disclosure of that information would be in violation of this chapter [§ § 2510-2520 of this title].' That the section is exclusionary is made plain by the explanation given in its legislative history:
' Section 2515 of the new chapter imposes an evidentiary sanction to compel compliance with the other prohibitions of the chapter. It provides that intercepted wire or oral communications or evidence derived therefrom may not be received in evidence in any proceeding before any court, grand jury, department, officer, agency regulatory body, legislative committee or other authority of the United States, a State, or a political subdivision of a State, where the disclosure of that information would be in violation of this chapter. The

> provision must, of course, be read in light of section 2518 (10) (a), discussed below, which defines the class entitled to make a motion to suppress. It largely reflects existing law. It applies to suppress evidence directly or indirectly obtained in violation of the chapter. There is, however, no intention to change the attenuation rule. Nor nenerally to press the scope of the suppression role beyond present search and seizure law. But it does apply accross the board in both Federal and State proceedings. And it is not limited to criminal proceedings. Such a suppression rule is necessary and proper to protect privacy. The provisions thus forms an integral part of the system of limitations designed to protect privacy. Along with the criminal and civil remedies, it should serve to guarantee that the standards of the new chapter will sharply curtail the unlawful interception of wire and oral cummunications.' (Senate Report No. 1097, U.S. Code Cong. and Admin. News, 1968, pp 2184, 2185. Citations omitted)."

Since the notice has not been served as required, it was not served in compliance with the atatute, and thus requires a suppression of each and every conversation of the appellant that was intercepted.

It is respectfully submitted that service of a proper ninety day notice was a matter of substantial right designed to protect the defendant from encroachment by the State upon his constitutionally guaranteed rights of privacy by mandating that appropriate notice of recent eavesdropping be given to persons whose conversations are intercepted.

It would therefore follow that the Court erred in not suppressing the evidence obtained under the order of Mr. Justice Dubin and those which followed.

With respect to the efforts exerted from April 17 to May 1

POINT THREE

THE APPELLANT QUINN ADOPTS EACH AND EVERY ARGUMENT ADVANCED BY THE CO-APPELLANT FURY WHICH ARE APPLICABLE TO HIM

CONCLUSION

THE DISTRICT COURTS DECISION NOT TO SUPPRESS THE TAPE RECORDINGS IN THE INSTANT CASE SHOULD BE REVERSED AND THE MATTER SHOULD BE REMANDED

Respectfully submitted,

EVSEROFF & SONENSHINE
Attorneys for Defendant-Appellant

WILLIAM SONENSHINE, ESQ.
JEFFREY A. RABIN, ESQ.